

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

GENERAL COLLECTION CO.,	)	4:07CV3178
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
JOEL MEYER,	)	
	)	
Defendant.	)	

This matter is before the court on a report and recommendation by Magistrate Judge Piester (filing 23), recommending that this debt collection action be remanded *sua sponte* to the County Court of Hall County, Nebraska, for lack of subject matter jurisdiction. The defendant has filed a brief in opposition (filing 28), which I will consider as a statement of objections filed pursuant to Fed. R. Civ. P. 72(b) and NECivR 72.3(a).

I have carefully conducted a de novo review of the report and recommendation pursuant to 28 U.S.C. § 636(b)(1). I find that Judge Piester has correctly found the facts and applied the law, and that the report and recommendation should be adopted. I find no merit to the argument made in the defendant's brief that the plaintiff's action to recover the unpaid balance of an account for medical services provided to the defendant's minor son is completely preempted by the Employee Retirement Income and Security Act of 1974. This action does not depend upon any assignment of ERISA benefits to the health care provider (the plaintiff's assignor, Central Nebraska Orthopedics), but, rather, it is a direct action to recover the balance owing on a debt that allegedly was incurred by the defendant. The mere fact that part of the medical bill was paid by an employee benefit plan is not sufficient to confer subject matter jurisdiction upon this court. Consequently, the case will be remanded to state court pursuant to 28 U.S.C. § 1447(c).

IT IS ORDERED that:

1. The magistrate judge's report and recommendation (filing 23) is adopted;
2. The defendant's statement of objections (filing 28) is denied;
3. On the court's own motion, this case is remanded to state court pursuant to 28 U.S.C. § 1447(c), for lack of subject matter jurisdiction;
4. The clerk of the court shall mail a certified copy of this order to the Clerk of the County Court of Hall County, Nebraska, and may take any other action necessary to effectuate the remand; and
5. Judgment shall be entered by separate document.

March 17, 2008.

BY THE COURT:

*s/ Richard G. Kopf*  
United States District Judge